

Exhibit

3



Joel B. Rothman

Board Certified in Intellectual Property Law

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October 16, 2019

VIA FEDEX and EMAIL: info@firstdomains.com

Mr. Joseph Parvin
Domains For Sale, LLC dba First Domains
9 Brendan Place
Princeton Junction, NJ 08550

Re: Markos v. Domains For Sale, LLC dba First Domains
Our File No.: 00520-0017

Dear Mr. Parvin,

We write on behalf of our client Steven LaMont Markos, a photographer, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

Steven LaMont Markos ("Markos")

Our client is an experienced professional photographer who makes a living from photography. Markos owns and operates the website, National Park Planner, www.npplan.com. Markos started National Park Planner in 2014 to bring to the public first-hand coverage of the over 400 National Parks that make up America's National Park System, including summaries of the park's amenities and professional photographs of the terrain.

Markos retains all copyrights to his photographs. Markos licenses his copyrighted Works, such as the one in this case, for commercial use.

In 2015, Markos created an image entitled "Cherokee-County01", hereinafter referred to as the "Work."

The Work at issue is shown below. At the time the Work was created, Markos applied Copyright Management Information to the an image.

Mr. Joseph Parvin
Domains For Sale, LLC dba First Domains
October 16, 2019
Page 2



Markos registered the Work with the Register of Copyrights on March 25, 2018 and was assigned the registration number VA 2-098-080, a copy of which is enclosed.

Infringement by Domains For Sale, LLC dba First Domains ("DFS")

The infringement at issue was identified on July 11, 2019. We have enclosed contemporaneous evidence of the infringement by DFS. In addition to the infringement, Markos' photograph was very obviously cropped as shown on the attached.

You have employed our client's Work in at least the manner indicated in the evidence attached. Your unauthorized use commenced on at least the date indicated above. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the Work for any purpose.

You have copied, displayed and distributed our client's Work without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's Work. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Work, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

Mr. Joseph Parvin
Domains For Sale, LLC dba First Domains
October 16, 2019
Page 3

Damages

Copyright law provides several different elements of compensation to Markos when a work is infringed or altered. Section 504 permits Markos to recover actual damages plus “any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages,” or statutory damages of up to \$150,000 per work infringed if the registration predated the infringement. Markos can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. Markos' photographs are of the highest quality. Markos' photographs are also scarce since he is one of the only sources of such quality photographs.

Markos' damages are not limited to what he would have agreed to license the Work for prior to the infringement. Rather, Markos' actual damages will be measured by the fair market value of the photograph considering DFS' use to sell and promote its business. Markos' actual damages must be measured in light of DFS' use of Markos' high quality and unique Work.

This is consistent with federal courts' approach to broadly construing the term “actual damages” to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, Markos can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits Markos to recover actual damages plus “any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” Therefore, Markos will also be entitled to DFS' profits from the infringement, based upon the revenue DFS earned in connection with the use of Markos' Work.

Alternatively, Markos could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predated the infringement. There is also the possibility that a judge or jury could determine that DFS' infringement was willful. If DFS' infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

Mr. Joseph Parvin
Domains For Sale, LLC dba First Domains
October 16, 2019
Page 4

Demand

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Work, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's Work was incorporated or employed; and
3. the source of the Work.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by October 30, 2019, we will take further steps to protect our client's rights. We look forward to your prompt response.

Sincerely,

SRIPLAW



Joel B. Rothman

JBR/bmb
Enclosures

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Karen Leigh Claywell

Acting United States Register of Copyrights and Director

Registration Number

VA 2-098-080

Effective Date of Registration:

March 25, 2018

Copyright Registration for a Group of Published Photographs

Registration issued pursuant to 37 C.F.R. § 202.4(i)

For Photographs Published: February 17, 2015 to October 09, 2015

Title

Title of Group: National Park Planner 2015 Miscellaneous
Number of Photographs in Group: 135

- **Individual Photographs:** Audubon-Acres-01, Audubon-Acres-02, Audubon-Acres-03, Audubon-Acres-05
Published: February 2015
- **Individual Photographs:** Brainerd-02, Brainerd-03, Brainerd-04, Brainerd-05, Brainerd-06, Brainerd-07
Published: February 2015
- **Individual Photographs:** Cherokee-County01, Cherokee-County02, Cherokee-County03, Cherokee-County04, Cherokee-County05, Cherokee-County06, Cherokee-County07
Published: February 2015
- **Individual Photographs:** Cherokee-Museum-02, Cherokee-Museum-03, Cherokee-Museum-04, Cherokee-Museum-06, Cherokee-Museum-07, Cherokee-Museum-08, Cherokee-Museum-10, Cherokee-Museum-11
Published: February 2015
- **Individual Photographs:** Conrad-Cabin
Published: February 2015
- **Individual Photographs:** David-Crockett-02, David-Crockett-03, David-Crockett-04, David-Crockett-05, David-Crockett-06, David-Crockett-07, David-Crockett-08
Published: February 2015
- **Individual Photographs:** Giles-County-01, Giles-County-02, Giles-County-03, Giles-County-04, Giles-County-05, Giles-County-06, Giles-County-07
Published: February 2015
- **Individual Photographs:** Hermitage02, Hermitage03, Hermitage04, Hermitage05, Hermitage06, Hermitage07, Hermitage08, Hermitage09, Hermitage10
Published: February 2015
- **Individual Photographs:** Junaluska-01, Junaluska-02, Junaluska-03, Junaluska-04, Junaluska-05, Junaluska-07
Published: February 2015

- **Individual Photographs:** Martin-House
Published: February 2015
- **Individual Photographs:** Red-Clay-12, Red-Clay-13, Red-Clay-14, Red-Clay-15, Red-Clay-16, Red-Clay-17, Red-Clay-18, Red-Clay-19, Red-Clay-20, Red-Clay-21, Red-Clay-22
Published: February 2015
- **Individual Photographs:** River-Museum01, River-Museum04, River-Museum05, River-Museum06, River-Museum07, River-Museum08, River-Museum09, River-Museum10
Published: February 2015
- **Individual Photographs:** Smith-Trail-Delaware-01, Smith-Trail-Delaware-02, Smith-Trail-Delaware-03, Smith-Trail-Delaware-04, Smith-Trail-Delaware-05, Smith-Trail-Delaware-06, Smith-Trail-Delaware-07, Smith-Trail-Delaware-08, Smith-Trail-Delaware-10, Smith-Trail-Delaware-11
Published: February 2015
- **Individual Photographs:** Smith-Trail-Main
Published: February 2015
- **Individual Photographs:** Smith-Trail-Maryland-01, Smith-Trail-Maryland-02, Smith-Trail-Maryland-03, Smith-Trail-Maryland-04, Smith-Trail-Maryland-05, Smith-Trail-Maryland-06, Smith-Trail-Maryland-07, Smith-Trail-Maryland-08
Published: February 2015
- **Individual Photographs:** Smith-Trail-Pennsylvania-01, Smith-Trail-Pennsylvania-02, Smith-Trail-Pennsylvania-03, Smith-Trail-Pennsylvania-04, Smith-Trail-Pennsylvania-06, Smith-Trail-Pennsylvania-07, Smith-Trail-Pennsylvania-08, Smith-Trail-Pennsylvania-09, Smith-Trail-Pennsylvania-10, Smith-Trail-Pennsylvania-11, Smith-Trail-Pennsylvania-12
Published: February 2015
- **Individual Photographs:** Smith-Trail-Virginia01, Smith-Trail-Virginia02, Smith-Trail-Virginia03, Smith-Trail-Virginia04, Smith-Trail-Virginia05, Smith-Trail-Virginia06, Smith-Trail-Virginia07, Smith-Trail-Virginia08, Smith-Trail-Virginia09, Smith-Trail-Virginia10, Smith-Trail-Virginia11, Smith-Trail-Virginia12, Smith-Trail-Virginia13, Smith-Trail-Virginia14, Smith-Trail-Virginia15
Published: February 2015
- **Individual Photographs:** Waterloo-Landing-01, Waterloo-Landing-02
Published: February 2015
- **Individual Photographs:** Stones-River-064, Stones-River-065, Stones-River-068, Stones-River-069, Stones-River-070, Stones-River-072, Stones-River-074, Stones-River-075, Stones-River-076, Stones-River-077, Stones-River-078
Published: May 2015
- **Individual Photographs:** Blue-Ridge-Parkway-221
Published: September 2015
- **Individual Photographs:** Blue-Ridge-Parkway-990
Published: October 2015

Completion/Publication

0000VA00020980800302

Year of Completion: 2015
Earliest Publication Date in Group: February 17, 2015
Latest Publication Date in Group: October 09, 2015
Nation of First Publication: United States

Author

- Author:** Steven LaMont Markos
Author Created: photographs
Work made for hire: No
Citizen of: United States
Domiciled in: United States
Year Born: 1964

Copyright Claimant

Copyright Claimant: Steven LaMont Markos
2606 Waters Edge Trail, Roswell, GA, 30075, United States

Rights and Permissions

Name: Steven LaMont Markos
Email: info@npplan.com
Telephone: (404)652-0532
Address: 2606 Waters Edge Trail
Roswell, GA 30075 United States

Certification

Name: Steven LaMont Markos
Date: March 25, 2018

Copyright Office notes: Regarding title information: Deposit contains complete list of titles that correspond to the individual photographs included in this group.

Regarding group registration: A group of published photographs may be registered on one application with one filing fee only under limited circumstances. ALL of the following are required: 1. All photographs (a) were created by the same author AND (b) are owned by the same copyright claimant AND (c) were published in the same calendar year AND 2. The group contains 750 photographs or less AND 3. A sequentially numbered list of photographs containing the title, file name and month of publication for each photograph included in the group must be uploaded along with other required application materials. The list must be submitted in an approved document format such as .XLS or .PDF. The file name for the numbered list must contain the title of the group and the Case Number assigned to the application.



